

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Chris Burton

**SUBJECT: CITY COUNCIL POLICY
PRIORITY #9 CANNABIS EQUITY
APPLICANT**

DATE: April 28, 2020

Approved /s/
Kim Walesh

Date 4/30/2020

INFORMATION

The purpose of this staff report is to provide Council with an update regarding progress on City Council Policy Priority #9, Cannabis Equity Applicant Program. This update covers the creation of San José's Cannabis Equity Applicant Program, which would facilitate the inclusion and support of individuals and communities in the cannabis industry who are linked to populations and neighborhoods that may have been negatively or disproportionately impacted by cannabis criminalization.

This report was scheduled to be heard at the Community and Economic Development Committee meeting on March 23, 2020, which was cancelled due to the COVID-19 shelter-in-place orders. It is important to note that all staff assigned to this Council Priority are currently redeployed to the Emergency Operations Center to respond to the COVID-19 crisis, so work on this item has paused.

BACKGROUND

Cannabis equity programs seek to provide opportunities for those disproportionately likely to have been arrested, incarcerated, or otherwise impacted by previous cannabis policies to have access to employment and entrepreneurship in the new cannabis industry. On March 5, 2019, the City Council voted to place creation of a Cannabis Equity Applicant Program on the Council Policy Priority list and ranked it Number 13 (due to the February 25, 2020 update, it is now Number 9).

On March 26, 2019, the City Council approved an ordinance amending the San José Municipal Code to add definitions and set forth criteria for a Cannabis Equity Assistance Program.

The ordinance defines an equity employee applicant as a natural person who:

- A. *“Has lived in San José for at least four years in a census tract where at least fifty-one percent (51%) of current residents have a household income at or below eighty percent (80%) of the AMI for Santa Clara County; or*
- B. *Attended a San José public school, or schools, for at least four years located in a census tract where at least fifty-one (51%) of current residents have a household income at or below 80% of the AMI for Santa Clara County for at least four years; or*
- C. *Were arrested or convicted for a crime relating to the sale, possession, use, or cultivation of cannabis, excluding those offenses which would be disqualifying for cannabis licensure under current State law; or*
- D. *Had a parent, guardian, child, or sibling convicted of a crime relating to the sale, possession, use, or cultivation of cannabis in the City of San José, excluding those offenses which would be disqualifying for cannabis licensure under current State law.”*

An equity business owner must meet the above criteria, as well as having a minimum of 51 percent ownership of the cannabis business applying for registration.

State Grant Funding Update

The California Cannabis Equity Act of 2018 established by Senate Bill 1294 (Bradford 2018), became effective January 1, 2019, and authorized the California Bureau of Cannabis Control to develop an equity grant program to disperse grant funding to local jurisdictions with equity programs to assist local equity applicants or local equity licensees to gain entry to, and successfully operate in, the State’s regulated market. The State of California has allocated \$10 million for local jurisdictions that have commercial cannabis equity programs providing direct assistance to local equity applicants or local equity licensees. On October 9, 2019, the Bureau of Cannabis Control notified the City Manager that the City had been approved to receive funding in the amount of \$560,082.30. On February 4, 2020, Council unanimously adopted a resolution authorizing the City of San José to enter into the standard grant agreement with the Bureau. The City is awaiting disbursement of funds from the State on the Bureau of Cannabis Control grant.

On February 5, 2020, the California Governor’s Office of Business and Economic Development (GO-Biz) released its Cannabis Equity Grants Program for Local Jurisdictions. Grant applications were due by March 9, 2020. This grant opportunity has a total of \$30 million available statewide for fiscal year 2019-2020. The GO-Biz Cannabis Equity Program grant had two types of funding available:

- **Funding Request Type 1: Assistance for Cannabis Equity Assessment and Program Development.** This would provide jurisdictions that have not yet conducted a cannabis equity assessment with up to \$60,000 to conduct an assessment of communities harmed by cannabis

prohibition and funds to develop a cannabis equity program, with a maximum grant request of \$150,000.

- Funding Request Type 2: Assistance for Cannabis Equity Program Applicants and Licensees. This funding would only be available to jurisdictions that have already conducted a cannabis equity assessment and have an adopted program. The maximum grant request is \$10 million.

The Administration evaluated the work needed to complete a cannabis equity assessment and determined while some form of report could be submitted to the State by the grant deadline, significant critical data would be lacking. Additionally, important community engagement work is needed to vet the cannabis equity assessment and develop the program.

On March 6, 2020, the Administration applied for \$149,300.37 in Type 1 funding from the Governor's Office of Business and Economic Development ("GO-Biz"). On April 15, 2020, GO-Biz informed the Administration that it was awarded the full funds of \$149,300.37 in grant funding. Acceptance of this grant will require Council resolution.

ANALYSIS

Currently, San José's cannabis program is open to applications from both equity and non-equity applicants interested in opening manufacturing, distribution, or testing facilities. Equity applicants in manufacturing, distribution, or testing are eligible for Phase 1 application assistance from the Division of Cannabis Regulation. If successful, these equity applicants are eligible for site assistance from the Office of Economic Development and technical assistance from a community-based organization under contract with the City. Additionally, the grant from the Bureau of Cannabis Control will allow for waivers of some permitting costs and annual operating fees.

To date, interest from equity entrepreneurs in manufacturing, distribution, or testing businesses has been quite low. Community advocates report that prospective applicants are most interested in delivery-only and storefront retail due to the lower capital costs and technical needs.

With the funding from GO-Biz, staff plans to develop a cannabis equity assessment to inform the development of an equity applicant program. Best practices in both cannabis equity and racial equity work find it is important to know the local impact of "War on Drugs" era policies on our residents. This report would document past impacts of cannabis arrests. The goal is to identify impacted neighborhoods, police beats, census districts, and demographics to better target outreach and develop program metrics. The outcome would be to increase access to employment and entrepreneurship in this new industry by reaching those disproportionately likely to have been arrested or incarcerated or have experienced impacts from previous cannabis prohibition in San José.

Based on the findings from the assessment and research into best practices in cannabis equity programs, staff may bring forward recommendations for updating the City's Cannabis Equity Ordinance to better serve those impacted by past cannabis prohibition.

The Administration is exploring opening retail registration to equity applicants, as was outlined in the April 23, 2020 Informational Memorandum on City Council Policy Priority #7, Review of Cannabis Land Use and Regulatory Provisions ([pdf](#)). Should Council approve this program expansion, the City's Cannabis Equity Applicant Program will be housed in the Office of Economic Development, with technical assistance from the Division of Cannabis Regulation at the San José Police Department and policy development assistance from the City Manager's Office of Administration, Policy, and Intergovernmental Affairs.

Best Practices in Cannabis Equity Programs

Staff has engaged with organizations and individuals working to advance cannabis equity both locally and statewide and heard a number of concerns about program practices that have not worked. Even California cities with long established cannabis equity programs have very few success stories. And in the worst cases, equity entrepreneurs have been exploited by disreputable landlords, financiers, or partners. Some have lost savings, spent months paying rent for an empty space without income coming in as they worked to navigate the licensing and business start-up process. Others have been brought on as the "equity face" of a business which is actually run by individuals ineligible for the equity process. In the worst scenarios, the equity owner may actually have few shares in the business or may only earn shares over a period of time during which their name and identity is being used by others to gain access to a valuable license and right to do business in the cannabis industry.

Staff wants to avoid these issues in San José. It is our goal to ensure that our cannabis equity program has integrity and authenticity. Our program should serve San José residents who were disproportionately impacted by past cannabis prohibition.

To that end, staff has learned the following from those working in the field and other cities' experience:

1. Technical assistance and training need to be available before the application process is opened.
2. Technical assistance requires more than a single workshop or day of workshops, especially in a heavily regulated and taxed industry. Critical types of assistance include:
 - a. Developing and implementing a robust and realistic business plan. This is important considering approximately 20 percent of small businesses close within the first year¹, according to the Small Business Administration (SBA).
 - b. Legal and regulatory compliance.

¹ U.S. Small Business Administration Office of Advocacy fact sheet:

<https://www.sba.gov/sites/default/files/advocacy/Frequently-Asked-Questions-Small-Business-2018.pdf>

- c. Marketing and sales outreach.
 - d. Supply chain and product management.
 - e. Hiring and employment requirements.
 - f. Ongoing mentorship that continues after the business is up and running.
3. Requiring applicants lease or own their site prior to obtaining licensing approval have resulted in significant costs equity applicants cannot afford, especially if there are long delays in approvals. (Note: this is a lesson San José learned during its first round of registration in 2015. San José updated its application process for the currently open categories of manufacturing, distribution, and testing labs and no longer requires site designation in the first phase of the application process.)
4. Access to capital is a significant barrier for equity applicants.
5. The federal government forbids using federal resources to aid businesses working in the cannabis space. This includes SBA financing, but also includes any federal grant-funded activities, such as working with existing Office of Economic Development/Work2Future partners that receive federal funding.

The Administration has identified a number of groups interested in partnering with the City to provide technical assistance such as business planning, legal assistance, regulatory compliance, accounting, and other areas as the program expands.

Potential Cannabis Equity Employees

Using funds from the Bureau of Cannabis Control grant, the Administration plans to hold a job fair and employment-related workshops for individuals seeking to work in the cannabis industry. Workshops will connect individuals with City and nonprofit resources, help with resumes and applications, explain the Police Department badging process, and provide information on how to expunge past convictions from an individual's record. San José's 16 registered cannabis dispensaries have expressed great interest in partnering in this effort.

CONCLUSION

Should the Council approve changes to cannabis zoning or the regulatory program as is being explored through Council Priority #7 (Review of Cannabis Land Use and Regulatory Provisions), the Administration will develop a work plan and budget for implementing the Cannabis Equity Program as part of the overall program changes.

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EVALUATION AND FOLLOW-UP

The Administration will report the outcome of the pending grant application to the Council via informational memorandum. If needed, additional actions will be presented to Council concurrent with Council Policy Priority #7, Review of Cannabis Land Use and Regulatory Provisions.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

COORDINATION

This memorandum was coordinated with the City Manager's Office of Administration, Policy, and Intergovernmental Relations; the Police Department; and the City Attorney's Office.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/

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For questions, please contact Chris Burton, Deputy Director, at (408) 535-8114.